



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION
DIVISION CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

April 19, 2021

VIA ELECTRONIC MAIL

jvaz@bellagiocorp.com

Mr. Jorge Vaz
President
Bellagio Corp
P. O. Box 366751
San Juan, Puerto Rico 00936

**Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Finca de Sueño Aurora Residential Development
2017 CGP NPDES ID: PRR1000A9
CEPD-CWA-02-IR-2020-022**

Dear Mr. Vaz:

The United States Environmental Protection Agency (“EPA”) is charged with the protection of human health and the environment under the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1251 *et seq.* Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person is in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, respectively, EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances.

The EPA has received citizen complaints concerning earth movement activities at “Finca de Sueño Aurora Residential Development” located in Rincón, Puerto Rico (the “Project” or “Development”). The EPA reviewed its databases (<https://permitsearch.epa.gov/epermit-search/ui/search> and <https://echo.epa.gov/>) to determine National Pollutant Discharge Elimination System (“NPDES”) permitting status for the Project. The EPA found that Bellagio Corp (“Bellagio”) submitted an electronic Notice of Intent (“eNOI”) on July 21, 2020, seeking coverage under the “2017 National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities” (“2017 CGP” or “CGP”) for the Project.¹ On August 4, 2020, the EPA granted 2017 CGP coverage to Bellagio for the Project under NPDES tracking number PRR1000A9.

¹ Based on EPA’s review of public aerial imagery and the information submitted by citizens, earth movement activities have been conducted at the Project’s site.

Request for Information

Under the authority of Section 308 of the CWA, and as provided in Part I.9 of the 2017 CGP², EPA issues this Request for Information (“RFI”) to Bellagio pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA. This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further re-delegated to the Director, Caribbean Environmental Protection Division.

EPA will use the requested information to determine Bellagio’s compliance with Sections 301(a) and 402(p) of the CWA, the NPDES storm water permit application regulations codified in 40 C.F.R. §§ 122.26, and the 2017 CGP.

Instructions for Responding and Providing Information

In responding to this RFI, please apply the following instructions, definitions and information:

- a. The signatory should be an officer or agent who is authorized to respond on behalf of Bellagio pursuant to the signatory requirements regulations codified at 40 C.F.R. § 122.22.
- b. A complete separate response must be made to each individual question in this RFI. Identify each answer with the number of the question to which it is addressed and precede each answer with the question to which it is addressed.
- c. Interpret "and" as well as "or" to include within the scope of the question as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing your response to each question, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in your immediate possession.
- e. In answering each question, identify all contributing sources of information.
- f. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
- g. If anything is deleted from a document produced in response to this RFI, state the reason for and the subject matter of the deletion.

² The permittee must also submit to upon request, copies of records required to be kept by the 2017 CGP.

- h. For each document produced in response to this RFI, indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, state the reason for its unavailability.
- i. For terms referred in this letter, you will find its meaning in Section 502(5) of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
- j. When referring to the “construction activities” at the Project, Bellagio shall include all those activities that involved earth movement activities within the Site, as defined in Appendix A - Definitions and Acronyms of the 2017 CGP. The 2017 CGP is found at <https://www.epa.gov/npdes/2017-construction-general-permit-cgp>. 82 Fed. Reg. 6534 (Jan. 19, 2017).

Documents and Information Requested

Pursuant to Section 308(a) of the CWA, please submit the following information:

The name of the owner(s) of the Project’s site, and their addresses, phone numbers, and emails.

- 1. A copy of the deed(s) where the Project is being developed.
- 2. The names of all past and present contractors engaged in conducting clearing, grading and/or excavation activities during the construction of the Project. Include a description of their roles and respective activities during the construction of the Project, their addresses, phone numbers, emails and names of their officers.
- 3. A copy of the construction contracts between Bellagio and all past and present contractors engaged in conducting clearing, grading and/or excavation activities at the Project’ site. If there was an oral agreement to conduct these activities, explain the terms of such agreement and the names of the persons involved.
- 4. The date when earth movement activities started at the Project’s site.
- 5. The name of the entity that initiated the earth movement activities at the Project’s site.
- 6. The total area of surface soil (in acres) that has been disturbed at the Project’s site as of the date of this letter.
- 7. The total area of surface soil (in acres) that will be disturbed at the Project’s site at the completion of the construction activities.
- 8. The date when construction activities at the Site are expected to be completed. Refer to Part 8 of the 2017 CGP.
- 9. A legible copy of any land surveys, soil studies, and hydrologic/hydraulic studies that had been prepared for the Site. Include any legible picture depicting the areas in the Project’s site were

earth movement activities had been conducted as of the date of this letter.

10. A color copy of all available aerial photographs taken by Bellagio during the construction of the Project.
11. A description of the erosion and sediment controls and soil stabilization practices that had been applied at the Project's site since prior to the initiation of earth movement activities to the date of this letter. Refer to Part 2 of the 2017 CGP.
12. A legible map showing the features of the Project's site. Indicate in the legible map, the areas of the Project's site impacted by the earth movement activities and the areas in which soil stabilization had been applied. Refer to Part 2.2.14 of the 2017 CGP.
13. A copy of the inspection reports from the initiation of the earth movement activities up to the date of this letter. Indicate the names of the individuals that performed the site inspections and their qualifications to conduct the inspections.³ Refer to Part 4 of the CGP.
14. A copy of all corrective action reports from the initiation of the earth movement activities up to the date of this letter. Refer to Part 5 of the 2017 CGP.
15. A copy of the Storm Water Pollution Prevention Plan ("SWPPP"), including amendments thereto, developed for the Project. Refer to Part 7 of the 2017 CGP.
16. A copy of the projected schedule for the Development. Refer to Part 7.2.3.f. of the 2017 CGP.
17. A detailed description of how storm water runoff was managed at the Site since the initiation of the earth movement activities to the date of this letter. Refer to Part 7.2.6 of the 2017 CGP.
18. A copy of all staff training documentation for the Project. Refer to Part 7.2.8 of the 2017 CGP.

Time and Delivery of Documents and Information

You are required to fully respond to the requested information within thirty (30) calendar days of receipt of this letter. Because of the ongoing COVID-19 pandemic, electronic delivery is strongly encouraged.⁴ To the extent possible, any documents to be submitted in response to this RFI should be in Portable Document Format ("PDF").

The requested information should be sent to the following EPA officials:

³ Part 4.1.1 of the 2017 CGP defines the term "qualified person", as a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of the 2017 CGP.

⁴ The EPA office in Guaynabo, Puerto Rico, is not currently accessible to the public and not able to receive documents by personal delivery.

Jaime López
Senior Physical Scientist
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II - Suite 7000
#48, PR-165, Km 1.2
Guaynabo, Puerto Rico 00968-8069
Tel.: (787) 977-5851
Email: lopez.jaime@epa.gov

If you are without access to a computer and must submit the response by U.S. mail, you should notify the above indicated EPA officials when a document is sent in such a manner.

Your response shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The EPA acknowledges that the COVID-19 pandemic may be impacting Bellagio’s operations. If that is the case, EPA will consider, at its sole discretion, Bellagio’s specific circumstances that could affect a timely response to this RFI, while ensuring that the EPA receives the relevant information it needs to effectively evaluate Bellagio’s compliance with Sections 301(a), 308(a) and 402(p) of the CWA. Therefore, Bellagio should contact the designated EPA officials in a timely manner for further instructions.

Failure to comply in all respects with this RFI within the time specified above may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. §1319, under which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties of up to \$56,460 per day for each day of continued non-compliance. Please be advised that you are under a continuing obligation to supplement the response if information not known or not available to you as of the date of submission of your response should later become known or available to you. In this instance, you must supplement your response to EPA within five (5) business days.

If at any time in the future you obtain or become aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, you must notify EPA of this fact immediately and provide a corrected response within five (5) business days. If any part of the response is found to be untrue, you may be subject to criminal prosecution.

This RFI is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. You may, if you so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential.” Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-part B, 40 C.R. Part 2.

If no such claim accompanies the information contained in the response to this RFI when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non- confidential documents should be clearly identified by you. If you desire confidential treatment of information only until a certain date or until the occurrence of a certain event, your response should state so.

EPA encourages you and your staff to become familiar with the Small Business Resource Information Sheet, which is available at <https://www.epa.gov/compliance/small-business-resources-information-sheet>. This Information Sheet provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

If you have any questions concerning this RFI, please contact the EPA official identified herein above.

Sincerely,

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

cc: Luis G. Malavé, NOI Preparer (via email)